

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Sprint PCS and AT&T Petitions)	WT Docket No. 01-316
for Declaratory Ruling on)	
CMRS Access Charge Issues)	

To: The Commission

REPLY COMMENTS OF ARCH WIRELESS, INC.

Arch Wireless, Inc. (“Arch”) submits the following reply comments on the petitions for declaratory ruling filed by Sprint PCS and AT&T regarding the rights of Commercial Mobile Radio Service (“CMRS”) carriers to recover from interexchange carriers (“IXCs”) their costs of terminating long distance traffic on their wireless networks.¹ Arch is a nationwide provider of paging and messaging services. Because paging carriers such as Arch are CMRS carriers,² Arch has a direct interest in the outcome of this proceeding.

Arch agrees with, and specifically incorporates by reference herein, the comments by other carriers overwhelmingly supporting Sprint PCS’s position that CMRS carriers, including paging carriers, are entitled to assess access charges.³ Arch observes that all industry segments

¹ *Sprint PCS and AT&T File Petitions for Declaratory Ruling On CMRS Access Charge Issues*, Public Notice, DA 01-2618, WT Docket No. 01-316 (rel. Nov. 8, 2001).

² 47 CFR § 20.9(a)(6).

³ *See, e.g., See Oklahoma Rural Telephone Companies Comments (“Oklahoma Companies”); The Rural Cellular Association Comments (“RCA”); Western Wireless Corp. Comments (“Western Wireless”); Nextel Partners, Inc. Comments; Cellular Mobile Systems of St. Cloud, LLC Comments (“CMS”); Leaco Cellular, Inc. Comments; Salmon PCS, LLC Comments; Missouri Small Telephone Company Group Comments (“STC”); Nextel Communications, Inc. Comments; Oklahoma and Kansas Rural ILECs Comments (“ILECs”); Verizon Wireless Comments; Missouri Independent Telephone Company Group*

(footnote continued)

agree that CMRS carriers are entitled to assess access charges, with one exception – not surprisingly, the IXC that pay access charges.⁴ There simply is no reason to allow one type of carrier (IXCs) to terminate their traffic for free on the networks of only one type of carrier (CMRS), while all other carriers must compensate each other for terminating each other's traffic.

Arch also files these comments to highlight an issue of particular concern to paging carriers with respect to the right to assess access charges. Specifically, Arch points out the importance of paging carriers' ability to assess access charges in light of a recent series of Commission decisions regarding "transit traffic." Transit traffic is traffic that traverses the network of a carrier other than the originating and terminating carriers. In three recent decisions arising out of formal complaint proceedings, the Commission has found that paging carriers may be required to compensate LECs that serve as transiting carriers for traffic that does not originate on the LEC network.⁵ Because paging carriers rarely exchange enough traffic with any single IXC to justify establishing direct interconnection, LECs frequently serve as the transiting carrier for IXC-to-paging traffic. If paging carriers are to be required to compensate LECs for transiting IXC traffic,⁶ the Commission must ensure that paging carriers are able to recover from IXCs for calls terminated on paging carriers' networks to avoid the untenable situation where paging

(footnote continued)

Comments ("ITC"); Cingular Comments (supporting Sprint PCS). *See also* United States Telecom Association ("USTA") Comments (supporting bill-and-keep if it applies to all "carriers, networks and technologies").

⁴ WorldCom Comments; Qwest Communications International, Inc. Comments ("Qwest"); AT&T Corp. Comments ("AT&T").

⁵ *Texcom, Inc., d/b/a Answer Indiana v. Bell Atlantic Corp d/b/a Verizon Communications*, Memorandum Opinion & Order, File No. EB-00-MD-14, FCC 01-347 (rel. Nov. 28, 2001) ("*Texcom*"); *Metrocall, Inc. v. Southwestern Bell Telephone Co.*, Memorandum Opinion & Order, 16 FCC Rcd 18123 (2001); *TSR Wireless v. U S West Communications, Inc.*, Memorandum Opinion & Order, 15 FCC Rcd 11166 (2000).

⁶ Arch disagrees with these decisions, and reserves the right to challenge them in an appropriate forum.

carriers would be required to incur the costs of terminating IXC's traffic *and* be required to pay transiting LECs for delivering that traffic.

In the *Texcom* decision, the Commission found that LECs should not be responsible for paying paging carriers reciprocal compensation for transit traffic because the LECs' customers do not originate the traffic and obtain no benefit from its termination.⁷ The Commission also found that LECs do not recover the costs of the facilities to interconnect with paging carriers through their reciprocal compensation or access rates.⁸ Because the Commission found that LECs' customers receive no benefit from transit traffic that neither originates nor terminates on the LEC's network, the Commission found that LECs may charge the paging carrier for transiting traffic.

Texcom's holding that LECs do not recover all of the costs of terminating paging-bound IXC traffic in their access charges thus establishes that IXCs are not paying the full cost of terminating their customers' calls on paging networks. This inequity alone would be enough to justify a finding that the IXC should pay access charges to the paging carrier.⁹ The issue is all the more critical in the transiting case, however, because the *Texcom* decision requires paging carriers to *compensate transiting LECs* for the IXCs' long distance traffic (as well as other LECs' local traffic) that is terminated on the paging network.

Absent the ability to collect access charges from the originating IXC, paging carriers will incur the cost of terminating the IXCs' traffic on their networks without receiving any compensation for doing so -- *and will be forced to pay transiting LECs for the privilege of*

⁷ *Texcom* at para. 6.

⁸ *Id.* at paras 11-13.

⁹ *See, e.g.,* Salmon PCS comments at 4; Verizon Wireless comments at 5-11; Western comments at 3; RCA comments at 3-4; Cingular comments at 5.

receiving the traffic. This result would be grossly inequitable to paging carriers. Arch is not aware of any situation in which any type of carrier is required both to bear the cost of terminating traffic that originates on another carrier's network *and* to compensate another carrier for receiving that traffic.

Indeed, it was to avoid similar inequities that the Commission codified that LECs may not charge other carriers for delivering traffic originating on the LECs' network.¹⁰ Although transit traffic does not fall within the scope of this rule, the general principle is the same: Carriers should not be required to pay to receive other carriers' traffic that they must then incur costs to terminate on their own networks. This result also would be inconsistent with the existing calling-party's-network-pays (CPNP) intercarrier compensation system.¹¹ In the analogous situation where long distance traffic transits one LEC's network and is terminated on another LEC's network, there is no question about the terminating LEC's right to charge the IXC terminating access. There is no reason for the result to be any different when the call is terminated on a paging network.¹²

¹⁰ 47 CFR § 51.703(b).

¹¹ *Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, 16 FCC Rcd 9610, 9614-15 (2001) ("Existing access charge rules and the majority of existing reciprocal compensation agreements require the calling party's carrier, whether LEC, IXC, or CMRS, to compensate the called party's carrier for terminating the call. Hence, these interconnection regimes may be referred to as "calling-party's-network-pays" (or "CPNP"). Such CPNP arrangements ... are clearly the dominant form of interconnection regulation in the United States and abroad.").

¹² That paging carriers and other CMRS carriers may charge their customers for receiving such calls is irrelevant to their right to charge the originating carrier. *See* Salmon PCS comments at 10; CTIA comments at 7; Oklahoma and Kansas Rural ILECs comments at 8,13 (*citing In re The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, Memorandum Opinion and Order, 4 FCC Rcd 2369, ¶ 27 (1989) ("CMRS Interconnection Reconsideration Order")).

It is therefore critical that the Commission reaffirm paging carriers' right to assess access charges, including for IXC traffic that transits a LEC network before being terminated on the paging carrier's network.

CONCLUSION

As the record in this proceeding amply demonstrates, CMRS carriers (including paging carriers) are entitled to collect access charges. Arch requests that the Commission grant Sprint PCS's petition and clarify this right, including for IXC traffic that transits a LEC switch to be terminated on a paging network.

Respectfully submitted,

By: /s/
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